

**FILED**

**FEB 16 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN DAVID MUNOZ-CRUZ,

Defendant - Appellant.

No. 04-30433

D.C. No. CR-04-00064-MFM

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Oregon  
Malcolm F. Marsh, District Judge, Presiding

Submitted February 13, 2006<sup>\*\*</sup>

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Juan David Munoz-Cruz appeals from the 57-month sentence imposed following his guilty-plea conviction to one count of illegal reentry after

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291.

Because Munoz-Cruz was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court for further proceedings consistent with *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005).

**REMANDED.**